

Educational television; program producer. An otherwise qualifying organization that produces and distributes free (or at small cost defraying fees) educational, cultural, and public interest programs for public viewing via public-educational channels of commercial cable television companies is operated exclusively for educational purposes and is exempt from Federal income taxes under section 501(c)(3) of the Code.

Advice has been requested whether the nonprofit organization described below, which otherwise qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is operated exclusively for educational purposes.

The organization was formed for the purpose of producing cultural, educational, and public interest television programs for presentation to the public. The programs are communicated to the public via the public and educational 'access channels' of commercial cable television companies. Such companies provide a system whereby many television signals can be carried over wires into the homes of subscribers who pay a regular fee for this service. This organization does not operate a cable television system itself, but rather produces programs for use on the 'access channels' of commercial cable television companies. Under Federal Communications Commission regulations certain cable operating systems must provide at least one 'educational access channel' and one 'public access channel.' Cable operating systems that are not required to maintain such channels may do so voluntarily. Advertising material designed to promote the sale of commercial products or services is prohibited on any of these 'access channels.'

Generally, the organization distributes its programs directly to the cable operating systems. However, in order to assure a broad distribution of its programs, the organization occasionally arranges for distribution through a distributor that handles the program distribution for a reasonable fee.

Usually, the organization provides its programs to the cable television operating systems at no charge. However, in certain circumstances small fees are charged to help defray the organization's production costs of the programs. These fees are substantially less than those charged by commercial program production companies, and are sufficient only to recover a portion of the program costs. The organization receives most of its financial support from government and foundation grants and contributions from the general public. Its board of directors is composed of professional educators, writers, persons with media experience, and representatives of the public.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for educational purposes.

Section 1.501(c)(3)-1(d)(3) of the Income Tax Regulations provides that the term 'educational,' as used in section 501(c)(3) of the Code, relates to the instruction of the public on subjects useful to the individual and beneficial to the community. An example of an educational organization described in the regulations is one whose activities include public discussions, forums, lectures, panels, and other similar programs. Such programs may be on radio or television.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for educational purposes unless it serves a public rather than a private interest.

Rev. Rul. 66-220, 1966-2 C.B. 209, holds that a nonprofit corporation organized and operated exclusively for educational purposes to operate a noncommercial educational broadcasting station presenting educational, cultural, and public interest programs is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 67-342, 1967-2 C.B. 187, holds that a nonprofit organization which is formed and operated to educate the public on a particular subject and which disseminates its educational material by means of commercial television may qualify for exemption under section 501(c)(3) of the Code.

These Revenue Rulings clearly indicate that an organization may achieve its educational purposes through the production of television programs, so long as the programs are presented in a noncommercial manner. The absence of commercial advertising is a key factor in determining the noncommercial nature of the programming activity. With regard to the programs prepared for cable television, the Federal Communications Commission regulations prohibit cable operators from commercially advertising on their educational or public 'access channels.'

By producing and making available for public viewing educational, cultural, and public interest programs in a noncommercial manner the organization is operating exclusively for educational purposes, and is providing a direct benefit to the general public. The benefit, if any, to the cable operators resulting from the organization's activities is merely incidental. Accordingly, the organization is operated exclusively for educational purposes and is exempt from Federal income tax under section 501(c)(3) of the Code.

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. The application should be filed with the District Director of Internal Revenue for the district in which is located the

principal place of business or principal office of the organization. See sections 1.501(a)-1 and 1.508-1(a) of the regulations.